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PTO/SB/33 (07/05)

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PRE-APPEAL BRIEF REQUEST FOR REVIEW CERTIFICATION OF FACSIMILE TRANSMISSION	Docket Number (Optional) 80210-952 ADB												
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 2px;">Application Number</td> <td style="width: 50%; padding: 2px;">Filed</td> </tr> <tr> <td style="padding: 2px;">10/766,325</td> <td style="padding: 2px;">January 29, 2004</td> </tr> <tr> <td colspan="2" style="padding: 2px;">First Named Inventor</td> </tr> <tr> <td colspan="2" style="padding: 2px; text-align: center;">Laurence W. Davies</td> </tr> <tr> <td style="padding: 2px;">Art Unit</td> <td style="padding: 2px;">Examiner</td> </tr> <tr> <td style="padding: 2px;">1771</td> <td style="padding: 2px;">Ula Corinna Ruddock</td> </tr> </table>		Application Number	Filed	10/766,325	January 29, 2004	First Named Inventor		Laurence W. Davies		Art Unit	Examiner	1771	Ula Corinna Ruddock
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10/766,325	January 29, 2004												
First Named Inventor													
Laurence W. Davies													
Art Unit	Examiner												
1771	Ula Corinna Ruddock												
<p style="margin: 0;">Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p>													

I hereby certify that this paper is being facsimile transmitted to the United States Patent and Trademark Office, Fax No. (571) 273-8300, on October 20, 2006

LYNN LEATHERDALE

Lynn Leatherdale

This request is being filed with a notice of appeal.

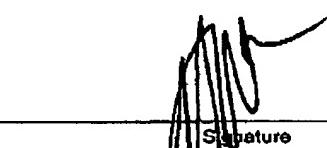
The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

 applicant/inventor. assignee of record of the entire interest.

See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

 attorney or agent of record.Registration number 31,726

Signature

Adrian D. Battison

Typed or printed name

 (204)944-0032

Telephone number

 attorney or agent acting under 37 CFR 1.34.Registration number if acting under 37 CFR 1.34 October 20, 2006

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below*.

*Total of 3 forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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FACSIMILE COVER LETTER

PLEASE DELIVER THE FOLLOWING PAGES TO:

NAME: Commissioner of Patents – ULA CORINNA RUDDOCK
FACSIMILE NUMBER: 1-571-273-8300
FROM: Adrian D. Battison
TOTAL NUMBER OF PAGES INCLUDING THIS COVER LETTER: 7
DATE: OCTOBER 20, 2006
TELEPHONE: (204) 947-1429 **FACSIMILE:** (204) 942-5723
OPERATOR: LYNN LEATHERDALE

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RE: United States Patent Application no: 10/766,325
Laurence W. Davies et al
A PULTRUDED PART REINFORCED BY LONGITUDINAL & TRANSVERSE
FIBERS AND A METHOD OF MANUFACTURING THEREOF
EXAMINER – Ula Corinna Ruddock GROUP 1771

**Notice of Appeal to Notice of Action dated April 2020/06, Pre-Appeal Brief,
Arguments and a request for a 3 MONTH extension of time.**

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OCT 20 2006

EXAMINER: Ula Corinna Ruddock
GROUP: 1771
APPLICANT: Laurence W. Davies et al
SERIAL NO: 10/766,325
FILED: January 29, 2004
FOR: A PULTRUDED PART REINFORCED BY LONGITUDINAL
AND TRANSVERSE FIBERS AND A METHOD OF
MANUFACTURING THEREOF

U.S. Patent and Trademark Office
Customer Service Window AF
Randolph Building
401 Dulany Street
Alexandria, VA 22314
U.S.A.

Dear Sir:

ARGUMENTS IN SUPPORT OF A PRE-APPEAL REQUEST FOR REVIEW

In order to simplify the issues in question, this request deals only with Claims 1 and 11 and the two issues arising therefrom which are:

1. Whether the prior Davies patents can be properly cited under 35 U.S.C. 120 (e).
2. Whether a rejection under 35 U.S.C. 103 can properly be maintained based on WO 00/78529.

The following arguments have been previously presented but do not refer back to the previously presented arguments since it is more suitable to collate and edit those arguments as follows:

With regard to the rejection under 35 U.S.C.102(e) based on Davies 6,881,288 and Davies 6,872,273, it is submitted that these two references both filed on the same date and containing the same disclosure are not properly citable under 35 U.S.C. 102 (e) because the present application has an earlier effective date of filing than these two patents.

It is respectfully pointed out that the present application claims the benefit of the priority date of June 14th 2001 from Provisional Application 60/325,785 which is earlier than the actual filing date of December 11th 2001 of Patent 6,881,288 and Patent 6,872,273 cited by the Examiner.

As set forth in MPEP at 706.02(b) there is stated that a rejection based on 35 U.S.C.102(e) can be overcome by:

(F) Perfecting priority under 35 U.S.C. 119(e) ...and establishing that the prior application (which is in this case 60/25,785) satisfies the enablement and written description requirements of 35 U.S.C.112.

Claim 1 herein has two key points and the remaining parts of the claim are concerned with establishing the context of the claim which is directed generally to pultruded parts reinforced by separate layers of material which are known. The key parts are:

a) Firstly that the resin is a urethane resin. This is disclosed in the Provisional application above at pages 9 and 10 which describe in detail the resin material.

b) Secondly that the "the or each second layer of fibers having a total quantity of fibers in the or each second layer which is of the order of or less than 0.5 ounces per square foot". This is clearly disclosed at page 6 line 8 and also at page 13 lines 12 to 22.

Claim 11 herein has a number of key points and the remaining parts of the claim are concerned with establishing the context of the claim which is directed generally to pultruded parts reinforced by separate layers of material which are known. The key parts are:

c) Firstly that the part formed is hollow so as to define a wall wholly surrounding a hollow interior. This is clearly disclosed in Figure 7 and in the related description in the middle of page 16 where it clearly refers to hollow structures and the inside surface.

d) Secondly that the reinforcement consists of only two layers including a "mat" layer on the inside and a longitudinal roving layer on the outside." This is clearly disclosed in Figure 7 and is described in detail from page 16, line 1 to page 17, line 2.

e) Thirdly that the resin is cross-linked. This is disclosed in the provisional application for example at page 5, line 10.

It is clearly established therefore that the provisional application from which this application claims priority, as set forth on page 1 of the application and in the declaration and in the filing certificate, describes the features set forth in Claims 1 and 11 which are in question herein. Thus the present application has an effective filing date of June 14th 2001.

The above patents have an actual filing date of December 11th 2001 which is clearly later than the above date. In order therefore for these patents to be cited under 35 U.S.C. 102 (e) it is necessary that the above patents not only make claim to an earlier date but that the claim be supported by the content of the application from which the claim is made.

Thus the Examiner alleges in the Final Rejection that the above patents have a provisional filing date of June 21st 1999. However the Examiner makes no attempt to justify this date by reference to the priority documents nor to identify where in the documents the above key features are shown. Indeed the analysis by the Examiner, which is improperly based on the issued patents, does not even mention the above key features, merely referring in general to features of pultruded parts.

Reference is made to Application Serial No 09/597,453 filed June 29th 2000 (from which the above patents are a continuation in part), a copy of which is available on the Public Pair Site of USPTO. It will be noted that one of the Applicants is the same Davies. This application is

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entirely silent in regard to any of the above key features. Thus in regard to features a) and e) above, the only mention of the resin to be used appears at the top of page 17 wherein it is stated that a polyester resin is used. The document does not refer to urethane resin nor to cross-linked resin.

In regard to feature b) above, the only mention of the amount of fibers in the mat layer occurs at the top of page 22 where it is stated that the mat is 0.010 inch thick. The document does not disclose a weight of the order of or less than 0.5 ounces per square foot.

In regard to feature c) above, the document does disclose a hollow part in Figures 1 and 1A. However in regard to feature d) Figure 1A clearly shows two mat layers 14 and 16 and the description at page 9 line 15 clearly states that "*more complex parts ... always use mat on the inside and the outside.*" Therefore this document is entirely silent on the provision of a pultruded part which has a mat layer only on the inside of the hollow, that is it consists only of the two layers of roving and the inner mat layer.

Thus the application from which the above patents claim an earlier date than the filing date fails to disclose the features concerned so that, in respect of these features, the above patents are only entitled to their actual date of filing which is later than the effective date of filing of the present application.

Furthermore it is pointed out to the Examiner that the subject matter herein is the work of inventor Davies who is the same inventor Davies set forth in the cited patents. Any subject matter contained in the Davies patents as filed after the present invention, which subject matter is not contained in the above parent application analyzed above, was derived from Davies after his filing date of the present application. It is submitted therefore that the rejections under 35 U.S.C.102(e) based on the two Davies patents are not proper and should be withdrawn.

With regard to the rejection under 35 U.S.C.103 based on WO 00/78529 it is firstly pointed out that this reference was published on December 28th 2000 and hence it was not published more than one year prior to the filing date of the Provisional application identified above filed on June 14th 2001 and hence it cannot be cited under 35 U.S.C.102 (b). The document does not therefore constitute a statutory bar under 35 U.S.C. 102.

With regard to a citation of this prior art under 35 U.S.C. 102 (a) as alleged by the Examiner, the allegation of the Examiner must be that WO 00/78529 is evidence that the invention of Davies et al in the present application was "*known or used by others in this country before the invention thereof*" by Davies et al. However Davies is himself an inventor named in WO 00/78529. The implication is that, even if the subject matter of the present invention is disclosed in WO 00/78529, which is not correct, that subject matter was communicated by the present inventors through Davies to the inventors of WO 00/78529. WO 00/78529 itself therefore provides no evidence that the invention was known by "others" before its invention by the present inventors. Furthermore, WO 00/78529 contains the same disclosure as the above US application Serial No 09/597,453 and

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hence does not contain the above key features of the present invention for the same reasons as set forth above. WO 00/78529 simply does not disclose the present invention and hence cannot be evidence that others knew of the invention.

For these two reasons therefore, WO 00/78529 does not provide evidence under 35 U.S.C. 102 (a) that the present invention was known or used by others prior to its invention. If this reference per se is not relevant under 35 U.S.C. 102 (a) and it does not constitute published prior art under 35 U.S.C. 102 (b) it is submitted that it cannot be used in a rejection under 35 U.S.C. 103 in combination with other references.

It is requested therefore that the Examiner's rejections be overturned and the claims be allowed.

Respectfully submitted
LAURENCE M. DAVIES ET AL
PER:
Adrian D. Battison
Registration No. 31,726

ADB/ll
October 20, 2006
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CERTIFICATION OF FACSIMILE TRANSMISSION

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